

BUREAU OF AUTOMOTIVE REPAIR

SPECIFIC LANGUAGE OF PROPOSED REGULATIONS

AB 2289 ADMINISTRATIVE CITATIONS AND FINES

Legend: Added text is indicated by underlining.

(1) Add new Article 11.5 to read as follows:

Article 11.5 Administrative Citations and Fines.

(2) Add Section 3394.25 to Article 11.5, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.25. Authority to Issue Citations and Fines.

The director or his/her designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and/or fines for violations by a licensee, contractor or fleet owner for violations of Chapter 5 (commencing with Section 44000) of Article 1 of the Health and Safety Code and any regulations adopted pursuant thereto.

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9 and 302, Business and Professions Code; Section 44002 and 44050 Health and Safety Code.

(3) Add Section 3394.26 to Article 11.5, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.26. Citations/Orders of Abatement for Licensees, Contractors or Fleet Owners.

In addition to or in lieu of any other remedy or penalty, including, but not limited to, education, training, or an office conference, the department may issue a citation to a licensee, contractor or fleet owner for violations of Chapter 5 (commencing with Section 44000) of Article 1 of the Health and Safety Code and any regulations adopted pursuant thereto. The citation may contain an order of abatement or the assessment of an administrative fine or both.

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9 and 302, Business and Professions Code; Section 44002 and 44050 Health and Safety Code.

- (4) Add Section 3394.27 to Article 11.5, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.27. Citation Format.

A citation shall be issued whenever any order of abatement is issued or any fine is levied. Each citation shall be in writing and shall describe with particularity the nature and facts of each violation, including a reference to the statute(s) and/or regulation(s) alleged to have been violated. The citation shall inform the person as defined in Section 302 of Business and Professions Code, of the right to contest the citation. The citation shall be served upon the cited person personally or by certified mail, return receipt requested, pursuant to Section 11505 of the Government Code.

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9 and 302 Business and Professions Code; Section 11505, Government Code. Reference: Sections 44002 and 44050 and 44051 Health and Safety Code.

- (5) Add Section 3394.28 to Article 11.5, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.28. Fine Amounts for Licensees, Contractors or Fleet Owners.

(a) An administrative fine issued pursuant to this section shall be at least one hundred dollars (\$100) but not more than five thousand dollars (\$5,000) for each violation.

The fine schedule shall be as follows:

		<u>Maximum</u>
<u>Health and Safety Codes</u>		
<u>§ 44002</u>	<u>Smog Check Estimates and Invoices</u>	<u>\$1000</u>
<u>§ 44011.3</u>	<u>Failure to Comply with Requirements for</u>	<u>\$1000</u>
	<u>Complete and Partial Pretest</u>	

§ 44012	<u>No emission Control System Inspection, no Emissions test or Inspection Test Procedures</u>	<u>\$3000</u>
§ 44014.4 (b)	<u>Advertising as a Certified Station without Being Certified</u>	<u>\$1,000</u>
§ 44015	<u>Improper Issuance of Certificates of Compliance</u>	<u>\$2000</u>
§ 44015.5	<u>Improper Issuance of Certificate of Compliance or Certificate of Noncompliance to a New Motor Vehicle</u>	<u>\$2000</u>
§ 44016	<u>Failure to Perform Repairs in Accordance with Established Specifications and Procedures</u>	<u>\$2000</u>
§ 44017	<u>Unauthorized Issuance of Repair Cost Waiver</u>	<u>\$2000</u>
§ 44017.3	<u>Failure to Post Sign Showing Minimum and Maximum Repair Amounts and Information</u>	<u>\$1000</u>
§ 44032	<u>Qualified Technicians Shall Perform Tests of Emission Control Devices and Systems in Accordance with Section 44012</u>	<u>\$1000</u>
§ 44033	<u>Failure to Display Prescribed Sign Requiring Repairs as a Condition of Performing a Test, Failure to Provide Written Estimate or Repair Choice Statement, Failure to State Separately Charges for Testing and Repairs Failure to Post Station and Technician Licenses</u>	<u>\$3000</u>
§ 44060 (g)	<u>Charging More for Certificate than Amount Charged by the Department</u>	<u>\$3000</u>

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§ 3340.15	<u>Failure to Comply with General Requirements for Smog Check Stations</u>	<u>\$1000</u>
§ 3340.16	<u>Failure to Comply with Test-Only Station Requirements Smog Check Station Equipment and Testing Requirements</u>	<u>\$2000</u>
§ 3340.16.5	<u>Failure to Comply with Test-and-Repair Station Requirements</u>	<u>\$2000</u>
§ 3340.17 (e)	<u>Failure to Calibrate Emission Inspection Systems with Bureau-Approved Gases that are Certified in Accordance with Section 3340.18 of this Article</u>	<u>\$5000</u>
§ 3340.23	<u>Failure of Smog Check Station to Comply with Specified Requirements Upon Loss of Services of Licensed Technician</u>	<u>\$3000</u>
§ 3340.30 (a)	<u>Failure by a Smog Check Technician to Perform Proper Tests, Inspections and Repairs</u>	<u>\$1000</u>
§ 3340.30 (b)	<u>Licensed Smog Check Technician: Failure to Maintain Current Mailing Address on File with the Bureau</u>	<u>\$1000</u>
§ 3340.30 (c)	<u>Licensed Smog Check Technician: Failure to Notify Bureau of Change of Employment</u>	<u>\$1000</u>
§ 3340.35 (c)	<u>Failure to Issue Certificate of Compliance or Non Compliance in Accordance with Procedures Specified in Section 3340.42 of the California Code of Regulations</u>	<u>\$3000</u>
§ 3340.41 (a)	<u>Failure to Give Customer a Copy of Test Report</u>	<u>\$2000</u>
§ 3340.41 (b)	<u>Tampering with or Entering False or</u>	<u>\$2000</u>

<u>Unauthorized Information into a System</u>		
§ 3340.41 (d)	<u>Failure to Follow Proper Specifications and Procedures for Diagnosis and Repair</u>	<u>\$2000</u>
§3340.41.3	<u>Failure to Comply with Invoice Requirements in the Manner Prescribed by Section 9884.8 of the Business and Professions Code</u>	<u>\$1000</u>
§ 3340.42	<u>Failure to Comply with Smog Check Emissions Test Methods and Standards</u>	<u>\$1000</u>
§ 3340.42.2	<u>Failure to Comply with Pass/Fail Criteria for OBD System Readiness Monitors</u>	<u>\$1000</u>
§ 3340.45	<u>Failure to Comply with Smog Check Inspection Procedures Manual</u>	<u>\$1000</u>

(b) In issuing a citation, the department shall evaluate all of the following:

- (1) The nature, gravity, severity, and seriousness of the violation.
- (2) The persistence of the violation.
- (3) The good faith or willfulness of the violator.
- (4) The history of previous violations by that violator, including the commission of numerous and repeated violations.
- (5) The failure to perform work for which money was received.
- (6) The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.
- (7) The failure to make restitution to consumers affected by the violation.
- (8) The extent to which the violator has mitigated or attempted to mitigate any damage or injury caused by the violation.
- (9) The degree of incompetence or negligence in the performance of duties and responsibilities.
- (10) The purposes and goals of this chapter and other matters as may be appropriate.

(c) If a citation lists more than one violation, the amount of the administrative fine assessed shall be stated separately for each statute and regulation violated.

(6) Add Section 3394.29 to Article 11.5, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.29. Compliance with Citation/Order of Abatement for Licensees, Contractors or Fleet Owners.

(a) An order of abatement issued pursuant to this section shall require compliance within thirty (30) days of issuance of the order. An order of abatement may require any or all of the following:

(1) The licensee, contractor or fleet owner to whom the citation is issued, shall demonstrate how future compliance with Chapter 5 (commencing with Section 44000) of Article 1 of the Health and Safety Code and any regulations adopted pursuant thereto will be accomplished. This demonstration may include, but is not limited to, submission of a bureau approved corrective action plan.

(2) The Smog Check technician to successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (c) of Section 44031.5 of the Health and Safety Code, or successfully complete one or more advanced retraining courses prescribed by the department, or both.

(3) The Smog Check technician to perform no inspections or repairs pursuant to Chapter 5 (commencing with Section 44000) of Article 1 of the Health and Safety Code until retraining courses prescribed by the department are successfully completed.

(b) If a hearing is not requested, payment of the administrative fine shall not constitute an admission of the violation charged. Payment of the administrative fine shall be due thirty (30) days after the citation is issued. If a hearing is requested, payment of the administrative fine shall be due when a final order is issued. The department may enforce the administrative fine as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(c) Failure to comply with an order of abatement or payment of an administrative fine issued by the department pursuant to this section is grounds for suspension or revocation of the license, or placing the licensee on probation.

(d) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the director or his/her designee. Such a request shall be in writing and shall be made within the time set forth for abatement.

(e) If a fine is not paid after a citation has become final, the fine shall be added to the cited person's license or registration renewal fee. A license or registration shall not be renewed without payment of the renewal fee and fine.

Note: Authority cited: Sections 9882, Business and Professions Code. Reference: Sections 125.9 and 302 Business and Professions Code; 44002, 44031.5 and 44050 Health and Safety Code.

(7) Add Section 3394.30 to Article 11.5, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3394.30. Contested Citations and Request for a Hearing or Informal Citation Conference for Licensees, Contractors or Fleet Owners.

(a) (1) In addition to, or instead of, requesting an administrative hearing, the person cited may, within thirty (30) days after service of the citation, contest the citation by submitting a written request for an informal citation conference to the bureau chief or his/her designee.

(2) Upon receipt of a written request for an informal citation conference, the bureau chief or his/her designee shall, within sixty (60) days of the request, hold an informal citation conference with the person requesting the conference. The cited person may be accompanied and represented by an attorney or other authorized representative.

(3) If an informal citation conference is held, the request for an administrative hearing shall be deemed withdrawn and the bureau chief or his/her designee, may affirm, modify, or dismiss the citation at the conclusion of the informal citation conference. If so affirmed or modified, the citation originally issued shall be considered withdrawn and an affirmed or modified citation, including reasons for the decision, shall be issued. The affirmed or

modified citation shall be mailed to the cited person and that person's counsel, if any, within ten (10) days of the date of the informal citation conference.

(4) If a cited person wishes to contest a citation affirmed or modified pursuant to paragraph (3), the person shall, within thirty (30) days after service of the modified or affirmed citation, contest the affirmed or modified citation by submitting a written request for an administrative hearing to the bureau chief or his/her designee. An informal citation conference shall not be held on affirmed or modified citations.

(b) If a person cited wishes to contest the citation, that person shall, within thirty (30) days after service of the citation, file in writing a request for an administrative hearing to the bureau chief or his/her designee.

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 125.9 and 302 Business and Professions Code; Sections 44002, 44051 and 44050 Health and Safety Code.